



FH
[REDACTED]

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of:

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/171517

PRELIMINARY RECITALS

Pursuant to a petition filed January 18, 2016, under Wis. Admin. Code § HA 3.03, to review a decision by the Rock County Department of Social Services ["County"] in regard to FoodShare benefits ["FS"], a Hearing was held via telephone from Madison, Wisconsin on February 9, 2016.

The issue for determination is whether the following Claim may be established against petitioner for an overpayment of FS: Claim # [REDACTED]; December 23, 2014 to June 30, 2015; \$3,997.00.

There appeared at that time via telephone the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

BY: [REDACTED], ESS
Rock County Department of Social Services
1900 Center Avenue
PO Box 1649
Janesville, WI 53546

ADMINISTRATIVE LAW JUDGE:

Sean P. Maloney
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Rock County, Wisconsin.

2. The County established the following Claim against petitioner for an overpayment of FS: Claim # [REDACTED]; December 23, 2014 to June 30, 2015; \$3,997.00. Exhibits #1 & #2.
3. Adult male “TW” is petitioner’s ex-husband; TW and petitioner have children in common. Exhibits #1 & #2.
4. Petitioner, TW, and their children all lived together during the time periods relevant to the FS overpayments listed in *Findings of Fact* #2, above. Exhibits #1 & #2.
5. TW had income during the time periods relevant to the FS overpayments listed in *Findings of Fact* #2, above, which caused the FS household containing petitioner, TW, and their children to not be eligible for FS during the time period in question. Exhibits #1 & #2.

DISCUSSION

The County argues that petitioner was over the FS income limit during the time periods in question because TW was part of her FS household and had income that put the household over the income limit.¹ Petitioner does not deny that TW had income that would put the household over the FS program limit. However, she denies that TW was part of the FS household.

The basic definition of a household for purposes of FS is a group of individuals who live together and customarily purchase food and prepare meals together for home consumption. 7 C.F.R. § 273.1(a)(3) (2015); *FoodShare Wisconsin Handbook* [“FSWH”] 3.3.1.1. A person under 22 years of age who is living with his or her natural or adoptive parents must be considered as customarily purchasing food and preparing meals together with his or her parents even if he or she does not do so, and thus must be included in the same household as his or her parents. 7 C.F.R. §§ 273.1(b)(1)(ii) (2015); FSWH 3.3.1.3.2. Therefore, persons who live together with a minor child they have in common are, by definition, part of the same FS household. 7 C.F.R. § 273.1(b)(1)(ii) (2015); See also, FSWH 3.3.1.3.2.

This matter must be decided based on a preponderance of the credible evidence. Wis. Admin. Code § HA 3.09(4) (September 2001). The burden is on the County to show that TW lived with petitioner and their child during the time period in question. The County has more than satisfied this burden. Therefore, it must be concluded that TW lived with petitioner and their children during the time period in question.

The County presented convincing evidence that establishes that TW lived petitioner and their children during the relevant time period. This included: TW and petitioner have children in common; TW has paid expenses for petitioner and the children (including rent); TW applied for healthcare benefits for himself, petitioner; and the children using the same address; TW’s most current online address is the same as petitioner’s address; petitioner, TW, and their children are all listed on the same lease; both the former (who is also a neighbor) and current owner of the property testified that petitioner, TW, and their children all lived there (the former owner testified that she saw petitioner and TW both sign the lease); and, petitioner testified that TW has not abandoned the children and is involved with the children but also testified that she does not know where TW lives. Exhibits #1 & #2.

¹ For purposes of FS, income includes all household income from wherever source, excluding only certain specific items not relevant here. 7 C.F.R. §§ 273.9(b) & (c) (2015); *FoodShare Wisconsin Handbook* [“FSWH”] 4.3.1. Earned income of any household member age 18 years old or older is to be included in the FS household income. 7 C.F.R. § 273.9(c)7. (2015); FSWH, 4.3.2.2.3.

Petitioner testified that TW did not live with her and their children. Given all of the other evidence in the record of this matter, petitioner's testimony is simply not credible.

Based on all of this evidence it must be concluded that during the time period of the overpayments petitioner, TW, and their children all lived together.

CONCLUSIONS OF LAW

For the reasons discussed above, the following Claim may be established against petitioner for an overpayment of FS: Claim # [REDACTED]; December 23, 2014 to June 30, 2015; \$3,997.00.

NOW, THEREFORE, it is

ORDERED

That the petition for review herein be and the same is hereby DISMISSED.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

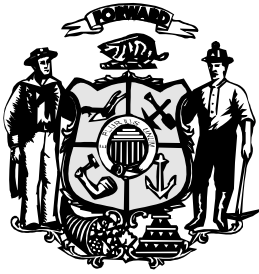
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 11th day of March, 2016

\sSean P. Maloney
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on March 11, 2016.

Rock County Department of Social Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability